

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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XUE BAO CHEN,

Plaintiff,

v.

WARDEN NEVEN, et al.,

Defendants.

Case No. 2:12-cv-02163-MMD-PAL

SCREENING ORDER

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted an application to proceed *in forma pauperis* (dkt. no. 1) and a civil rights complaint pursuant to 42 U.S.C. § 1983. The Court will defer ruling upon the application (dkt. no. 1). The Court has reviewed the complaint. Plaintiff will need to file an amended complaint.

When a “prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Allegations of a pro se complainant are held to less stringent standards than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam).

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” . . . [T]he pleading standard Rule 8 announces does not require

1 “detailed factual allegations,” but it demands more than an unadorned,  
 2 the-defendant-unlawfully-harmed-me accusation. A pleading that offers  
 3 “labels and conclusions” or “a formulaic recitation of the elements of a  
 cause of action will not do.” Nor does a complaint suffice if it tenders  
 “naked assertion[s]” devoid of “further factual enhancement.” . . .

4 [A] complaint must contain sufficient factual matter, accepted as true, to  
 5 “state a claim to relief that is plausible on its face.” A claim has facial  
 6 plausibility when the plaintiff pleads factual content that allows the court to  
 7 draw the reasonable inference that the defendant is liable for the  
 8 misconduct alleged. The plausibility standard is not akin to a “probability  
 requirement,” but it asks for more than a sheer possibility that a defendant  
 has acted unlawfully. Where a complaint pleads facts that are “merely  
 consistent with” a defendant’s liability, it “stops short of the line between  
 possibility and plausibility of ‘entitlement to relief.’”

9 *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (citations omitted).

10 In count I, plaintiff alleges that defendant Vidaurri beat him after a disagreement  
 11 about a blanket. Plaintiff has stated a claim that defendant Vidaurri used excessive  
 12 force.

13 In count II, plaintiff alleges that he informed his unidentified caseworker by a  
 14 request form that he and his cellmate disliked each other. Plaintiff further alleges that  
 15 after he sent his form, other inmates stole his property from his cell. Later, other  
 16 inmates attacked him, causing, among other injuries, the loss of four teeth. Plaintiff has  
 17 stated a claim that the unidentified caseworker was deliberately indifferent to a risk of  
 18 serious harm. See *Farmer v. Brennan*, 511 U.S. 825, 838 (1994). However, plaintiff  
 19 has not named the caseworker as a defendant. Plaintiff will need to correct that defect  
 20 in an amended complaint.

21 Plaintiff has named Warden Neven as a defendant. Defendant Neven is a  
 22 supervisor. “A supervisor may be liable if there exists either (1) his or her personal  
 23 involvement in the constitutional deprivation, or (2) a sufficient causal connection  
 24 between the supervisor’s wrongful conduct and the constitutional violation.” *Hansen v.*  
 25 *Black*, 885 F.2d 642, 646 (9th Cir. 1989). Plaintiff has not alleged any personal  
 26 involvement or other connection by defendant Neven. Plaintiff will need to correct that  
 27 defect in an amended complaint.


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1 In addition to correcting the above-noted defects, plaintiff will need to re-allege  
2 count I in the amended complaint, or it will be waived. *King v. Atiyeh*, 814 F.2d 565,  
3 567 (9th Cir. 1987).

4 IT IS THEREFORE ORDERED that the Clerk shall send to plaintiff a civil rights  
5 complaint form with instructions. Plaintiff will have thirty (30) days from the date that  
6 this order is entered to submit his amended complaint, if he believes that he can correct  
7 the noted deficiencies. Failure to comply with this order will result in the dismissal of  
8 count II and defendant Neven from this action.

9 IT IS FURTHER ORDERED that plaintiff shall clearly title the amended complaint  
10 as such by placing the word "AMENDED" immediately above "Civil Rights Complaint  
11 Pursuant to 42 U.S.C. § 1983" on page 1 in the caption, and plaintiff shall place the  
12 case number, 2:12-cv-02163-MMD-PAL, above the word "AMENDED."

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14 DATED THIS 25<sup>th</sup> day of February 2013.

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17 MIRANDA M. DU  
18 UNITED STATES DISTRICT JUDGE  
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